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ABSTRACT

This book is in the form of a bibliographic essay, and addresses the needs of educators seeking access to legal research materials. The first item discussed is court decisions and examples are given which demonstrate the importance of legal precedent. An explanation is given of the complicated systems for reporting court decisions and how the educational researcher can find a case, read it, and apply its findings to the particular problem at hand. A section is devoted to finding information about legislation, codes and statutes, and understanding legislative intent. Included in this section are discussions on hearings and reports, researching bills that fail, determining the status of pending legislation, and state legislation. The next three sections discuss finding and using federal agency publications, list useful legal periodicals and reference works, and describe law library indexing systems. The final section discusses the revolution that has been brought to law libraries by the advent of computerized legal research and explains how an educator may make use of the complex resources available through computerized searches. (JD)

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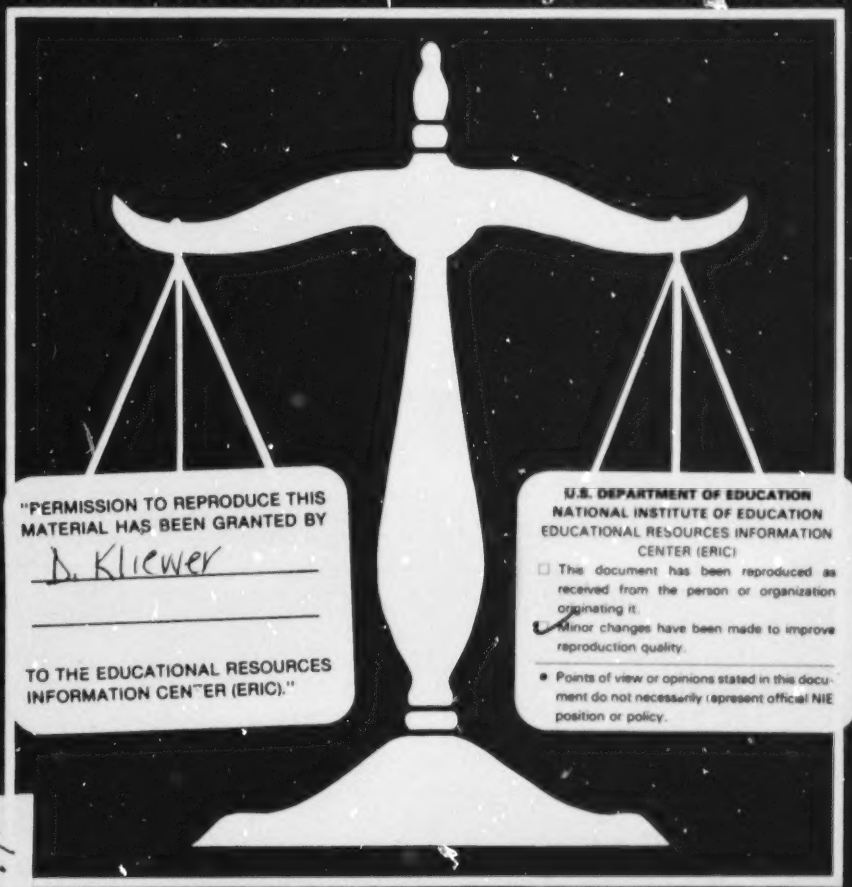
Legal Research for Educators

DAVID LOWE and ANNETTE JONES WATTERS



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Legal Research for Educators

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Introduction

Educators increasingly need access to legal research materials that can be found only in a law library. However, their research needs are considerably different from those of attorneys, law students, and judges, who constitute a law library's primary clientele. Educators may be familiar with the research tools of a general library, but they will likely find a law library a strange place, where the jargon, the citation forms, and the arrangement of the reference works are unfamiliar.

There are important differences between the research needs of an educator and those of an attorney. An attorney conducts legal research in order to practice law. But it would be most unwise for an educator or any lay person to use the legal research tools described in this book in order to avoid attorney's fees.

Another important difference is the educator's greater need for secondary sources. The attorney's research is centered around the primary sources of the law: codes, statutes, and court decisions. The educator will find these sources valuable, and this book will aid in their use. However, the educator will usually rely more heavily on secondary sources such as journal articles, treatises, legal encyclopedias, and dictionaries. Specific titles and series will be described in this book.

The educator is probably less familiar than the attorney with the ways in which certain practices of the American legal system determine the organization of the law library. The characteristic of the American legal system that most complicates the task of legal researchers is the practice of following precedent. Generally, more time is devoted to searching for previous court decisions that deal with a particular topic or situation than is spent finding the texts of laws passed by legislative bodies. The volume of published court decisions is enormous and is growing at an astronomical rate. There are several methods of locating relevant decisions and none of the methods is perfect. Every kind of dispute that human beings can have can end up in court, therefore any indexing system for locating them must be infernally complex. This book will discuss several of these methods and will point out their usefulness to the educator.

The educator will also have to learn to use the law library's methods of cop-

ing with the problem of timeliness. The body of law is in a constant state of flux. By lunchtime on any given business day, the law is not the same as it was when the sun rose that morning; and the legal researcher must struggle to keep up. This book will explain the necessary techniques.

Another facet of the American legal system that can cause confusion is federalism. It may seem an obvious point that there are courts and lawmaking bodies at both the state and federal levels, but many times inexperienced researchers will lose track of the level of government in which they are interested.

This book is in the form of a bibliographic essay. First we will discuss court decisions. The importance of legal precedent will be demonstrated by example. The complicated systems for reporting court decisions will be explained, as will how to find a case, how to read a case, and what an educator can do with a case.

By legislation is meant what non-attorneys usually refer to simply as law. The acts of Congress and of the state legislatures as approved by presidents and governors constitute legislation. The educator using the law library will not be interested simply in finding the text of appropriate legislation — a task that is not necessarily simple — but will also need to know how to research the documentary history of legislation in order to establish what is called *legislative intent.*

In addition to legislation, there is administrative regulation. This is an area of growing importance to everyone, but to educators a knowledge of regulation and regulatory sources is vital. By the very nature of their profession, educators deal with the administrative agencies that have the powers to regulate educational activities. Educators do not need to be reminded of the importance of the decisions of education departments at the state and national levels and of other administrative entities such as tenure commissions.

Finally, this book will discuss the revolution that has been brought to law libraries by the advent of computerized legal research. Although this kind of research may sound esoteric and difficult, it is not at all unusual for a so-called outsider to become competent.

The best place to read this book is in a well-equipped law library. There the various legal research works under discussion will not be abstractions, mere words on a page. Instead they will be tangible objects, things that can be taken off the shelf, inspected, and understood.

But what is a well-equipped law library? And how is the educator, who is presumably neither an attorney nor a law student, going to gain access to one? The best kind of law library from the researcher's point of view is an academic law library. By this is meant a law library that is connected with a law school. This kind of library should contain a broad collection of legal research materials to support the work of law students and faculty. The materials held in a medium-sized academic law library should be sufficient for almost any research need of an educator. Academic law libraries will also have a professional staff that can be of great assistance to the non-attorney.

Access to some academic law libraries can be a problem. The researcher who is not connected with a private institution may not be allowed to use its facilities without the payment of a stiff fee. On the other hand, a law library connected with a public institution will probably be open to all researchers.

State supreme courts usually have large law libraries to serve the research needs of state supreme court justices and the attorneys who practice before them. These libraries are frequently referred to as state law libraries, but sometimes this term is used for another law library in the state capital designed for the needs of other branches of state government. State law libraries of either kind are comparable to academic law libraries and will probably be open to the general public.

The public law library or courthouse law library found in any medium-sized city is less well-equipped but is likely to be more convenient for many educators. Even a very small town, if it is a county seat, will have this kind of library. The basic sources of law can be found in these libraries, but only in the larger cities will other legal research materials be available. These libraries are usually open to the public.

Many valuable legal research materials can be found outside law libraries. A college or university library, a medium-sized or large public library, or the education library associated with a university can be useful to an educator doing legal research. The most important materials to be found outside conventionally defined law libraries are government publications.

Federal government publications are distributed to libraries by two methods. Most libraries simply purchase materials from the Government Printing Office just as they would from any other publisher. However, at least one library in each congressional district is designated a *depository* for government publications and receives large numbers of them at no cost. A depository can be a public or a university library. All accredited law school libraries have the option of choosing depository status if they so desire. The guiding principle of the depository system is that the people have a right to study the operations of their government. Therefore, government publications are distributed free of charge to make them easily available to the public.

Most depository libraries shelve their collection of government publications in a separate area and arrange them by a call number system that is different from the one used for the rest of the library's books and periodicals. Under this call number system, all the publications of one government agency have call numbers with the same prefix and are shelved together. Rarely will more than a small fraction of a depository library's government publications be listed in the card catalog. The call numbers of government publications must be located by other methods. We will discuss how this can be done when we discuss individual government publications that are useful in legal research.

Some states have a depository system for the distribution of state agency publications. The librarian at any public library will be able to provide information about such a system and about the location of the nearest depository for federal government documents.

Chapter 1
Locating a Specific Court Decision

Most of the people doing research in law libraries are not looking for the texts of laws passed by Congress or by state legislatures; they are looking for court decisions. The legal system in the United States, like those in most English-speaking nations, places great importance on previous court decisions that establish the legal precedent for any situation. We are all familiar with the importance of such precedent-setting cases as *Brown v. Board of Education*, which mandated school desegregation; but the importance of the precedent set by court decisions goes far beyond this kind of landmark case. Our basic concepts of fairness and justice require that people in similar legal situations be treated similarly. The system of following precedent allows for this to take place.

Precedent is also necessary to determine how a given section of legislation can be applied to a given situation. No matter how straightforward the text of legislation may appear when it is written on the page, there are often complications when that text is applied in a particular case. Relying on precedent ensures that people engaged in legal disputes over the same section of legislation are treated similarly.

For example, section 16-24-12 of the *Alabama Code* states that "Any teacher in the public schools . . . shall be deemed offered reemployment for the succeeding school year [unless given] notice in writing . . . on or before the last day of the term of the school in which the teacher is employed." This seems straightforward enough, but the Alabama Supreme Court has held in a series of decisions that this section applies to probationary teachers and not to teachers employed under one-year certificates because of an emergency. In other words, "any teacher" does not exactly mean any teacher.

Case Reporters

Individual court decisions are named or described in several ways. Most educators are accustomed to seeing court decisions referred to by the names of the parties, as in *Brown v. Board of Education*. An investigator will also see a more complete citation such as

Brown v. Board of Education, 347 U.S. 483;

or even

Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L. Ed. 873 (1954).

The basic task that the educator or other layman in a law library must master is understanding this kind of citation. The standard form, which is used to cite other material as well as court decisions, is

[number] [cryptic abbreviation] [number]

The first number is a volume number and the last number is the page of that volume on which the decision begins. The abbreviation refers to a particular series of case reporter.

A case reporter is a publication that prints the decisions of an individual court or a group of courts. Frequently the decisions of one court will be published in more than one reporter. When this happens, a person may see double or even triple cites as in the second example shown above. The national reporter system and the most important abbreviations are listed on page 8. Reference books that list the more obscure abbreviations are listed in Chapter 6.

One important distinction that must be kept in mind when using court decisions is the difference between *trial* courts and *appellate* courts. Cases reach appellate courts only after they have been tried in a trial court. The appellate court does not settle disputes over the facts of the case but decides whether the trial court followed the law and the rules of legal procedure. Frequently there is another appellate court at an even higher level that can judge the actions of both the trial court and the lower appellate courts. With a few exceptions, the court decisions educators would be researching are those of appellate courts.

Another aspect of court structure that one must remember is that the courts reflect the federal nature of our government. There are trial and appellate courts at both the federal and state levels, and a researcher must always keep in mind the kind and level of court that is being researched.

The format and contents of a case reporter will vary according to the court and publisher. The great majority of court decisions published in the United States are printed by West Publishing Company. The publishers of other reporters usually use a format similar to that used by West.

In a written decision the judge of a court presents the settlement of the dispute at hand and the legal argument that led to that conclusion. A decision does not include a transcript of the testimony of witnesses, the arguments of attorneys, or any other of the voluminous written materials that may be produced in the process of a court case. The report of a decision does, however, include more than just the text of the decision. Various other materials are added in order to make the decision more easily used. The first page of the West report of a case decision is shown in Figure 1.

The report of a case in a West reporter begins with the *synopsis*. This is one

64 Cal.App.3d 59

Gloria PAULUS, Plaintiff and Appellant,

v.

BOARD OF TRUSTEES OF SEQUOIA UNION HIGH SCHOOL DISTRICT, and Sequoia Union High School District, Defendants and Respondents.

Civ. 38582.

Court of Appeal, First District, Division 4.

Oct. 27, 1976.

Rehearing Denied Nov. 24, 1976.

SYNOPSIS

Teacher filed petition for writ of mandate seeking to compel school board and school district to classify her as probationary teacher and to set aside her dismissal. The Superior Court, San Mateo County, Robert D. Miller, J., denied petition, and teacher appealed. The Court of Appeal, Caldecott, P. J., held that evidence sustained finding that teacher was offered and accepted contract as temporary teacher because of shortage created by permanent or probationary teachers on leaves of absence; therefore, such teacher was not entitled to statutory rights of a probationary teacher.

Affirmed.

DIGEST TOPIC KEY NUMBER

1. Schools and School Districts ⇐136, 137

Unless statutory mandate compels otherwise, position of teacher is created and fixed by terms of contract of employment, and in order to abrogate the contract statutory mandate must be clear. West's Ann. Education Code, §§ 13337.3, 13338.1.

2. Appeal and Error ⇐989

On appeal, extent of Court of Appeal's inquiry into findings of fact is whether they are supported by substantial evidence.

3. Mandamus ⇐168(4)

Evidence in mandate action to compel school board and school district to classify teacher as probationary teacher and to set aside her dismissal sustained finding that teacher was offered and accepted contract as temporary teacher because of shortage created by permanent or probationary teachers on leaves of absence; therefore, such teacher was not entitled to statutory rights of a probationary teacher. West's Ann.Education Code, §§ 939, 13337, 13337.3, 13443.

4. Mandamus ⇐168(2)

In mandate action to compel school board and school district to classify teacher as probationary teacher, burden of proof was on teacher as petitioner.

5. Schools and School Districts ⇐133.11

Fact that teacher was assigned to continue in deceased teacher's former classes for remainder of school year did not establish that such teacher was hired to replace deceased teacher so as to compel teacher's classification as a probationary teacher. West's Ann.Education Code, §§ 939, 13337, 13337.3, 13443.

6. Schools and School Districts ⇐133.12

Because substitute and temporary teacher classifications are not guaranteed procedural due process by statute, they are narrowly defined by legislature, and should be strictly interpreted. West's Ann.Education Code, §§ 13337, 13337.3.

HEAD NOTE

Rubin Tepper, Palo Alto, for plaintiff and appellant.

Keith C. Sorenson, Dist. Atty., George F. Camerlengo, Deputy Dist. Atty., Redwood City, for defendants and respondents.

CALDECOTT, Presiding Justice.

Appellant Gloria Paulus filed a petition for writ of mandate, seeking to compel respondents Board of Trustees of the Sequoia Union High School District (hereinafter Board) and the Sequoia Union High School District (hereinafter District) to classify her as a probationary teacher and to set aside her dismissal as an employee of respondent. The appeal is from the judgment denying the petition.

I

Appellant's principal contention is that the circumstances under which she signed

Figure 1. First page of a case report in *134 California Reporter*, published by West Publishing Company. Used by permission.

paragraph in length and is much like the paragraph at the beginning of a newspaper article that tells the reader who, what, when, why, and where. Because the decision is almost always that of an appellate court, the synopsis gives the history of the case in the lower courts from which it was appealed.

The next part after the synopsis is the *headnotes*. These are summaries of the major legal issues decided in the case. The headnotes are arranged under a set of subject headings called *digest topics* and *key numbers*, which allow the researcher to locate court decisions on a given subject. The headnotes, digest topics, and key numbers together constitute a kind of outline of the decision.

Careless legal researchers frequently fall into the habit of scanning the synopsis and headnotes of cases and skipping the decisions. This is unwise for two reasons. First, there is a certain subjectivity in the process of defining and summarizing issues. Different editors or researchers might do this differently for the same case. Also, editors sometimes make mistakes. In at least one case, the headnote states the exact opposite of the ruling by omitting the word *not*.

After the headnotes, the names of the attorneys are listed, and next follows the ruling or decision of the court. This is what the researcher is looking for. In it are contained the precedents for the future.

Many appellate courts, such as the United States Supreme Court, are made up of more than one judge. If any judge disagrees with the decision of the majority, that judge can state the reason for disagreement in a dissenting opinion. If a judge agrees with the majority decision but has something to add, or if the judge agrees with the majority but has reached that decision by different legal reasoning, the judge can write a concurring opinion. Both of these can be combined in opinions that "concur in part and dissent in part." Any dissenting or concurring opinions are printed following the majority opinion. The majority opinion is the law in a case.

A basic knowledge of the coverage of the various reporters is necessary to anyone doing legal research. The *Supreme Court Reporter* reports the decisions of the United States Supreme Court, and other West reporters contain the decisions of the lower federal courts and the decisions of the state appellate courts grouped together by region. The most important reporters, their citation abbreviations, and the courts currently included are given in Table 1.

Two things should be noted about this table. First, the regional designations do not necessarily make sense. Kansas is in the *Pacific Reporter* and Kentucky is in the *South Western Reporter*. Something else that may be confusing is the *2d* in the abbreviations column. In an effort to keep the volume numbers low, West began second series of many of their reporters. For example, the next volume after 300 *Southern Reporter* is not volume 301 but 1 *Southern Reporter 2d*.

Because the headnotes and the synopses are written by employees of West, they are copyrighted and cannot be published by anyone else. The texts of the decisions, however, are in the public domain. Anyone can publish them. Most of the reporters published by other private presses gather cases in some broad

subject area such as labor law or trade regulation, rather than publishing all the opinions of a certain court or group of courts.

The most important non-official reporter from outside the West system is an exception. This is the *United States Supreme Court Reports Lawyers' Edition*, commonly referred to simply as *Lawyers' Edition*. The contents are similar to those of a West reporter; however, there are two additions that can be very useful. For important cases *Lawyers' Edition* includes summaries of the arguments of the parties involved. Each volume of *Lawyers' Edition* also contains an appendix with articles on legal issues discussed in the cases.

Decisions of many state appellate courts are published in official editions by the state governments. The United States Supreme Court also has an official edition, the *United States Reports*. Official editions frequently have some explanatory material added by editors, but it is rarely as elaborate and useful as that provided by West.

Federal Courts

Reporter	Abbreviation	Coverage
United States Reports	U.S.	U.S. Supreme Court
Lawyers' Edition	L.Ed.	U.S. Supreme Court
Supreme Court Reporter	S.Ct.	U.S. Supreme Court
Federal Reporter	F., F.2d	U.S. Court of Appeals
Federal Reporter	F.Supp.	U.S. District Court

State Appellate Courts

Reporter	Abbreviation	Coverage
Atlantic	A., A.2d	Conn., Del., Maine, Md., N.H., N.J., Pa., R.I., Vt., D.C.
North Eastern	N.E., N.E.2d	Ill., Ind., Mass., N.Y., Ohio
North Western	N.W., N.W.2d	Ia., Mich., Minn., Nebr., N.D., S.D., Wisc.
Pacific	P., P.2d	Alaska, Ariz., Cal., Colo., Hawaii, Idaho, Kan., Mont., Nev., N.M., Okla., Ore., Utah, Wash., Wyo.
South Eastern	S.E., S.E.2d	Ga., N.C., S.C., Va., W.Va.
Southern	So., So. 2d	Ala., Fla., La., Miss.
South Western	S.W., S.W.2d	Ark., Ky., Mo., Tenn., Tex.

Table 1. Important case reporters and the areas they cover.

Chapter 2
Using a Digest

If educators who are conducting legal research know only the name of a case or do not have a case name but only a topic about which they want to find decisions, then they should use a *digest*. A digest is a name and subject index to decisions. Digests are the most sophisticated legal research tool discussed in this book, but they are not too difficult to be useful to researchers without a legal background.

The first step in using a digest is choosing which digest to use. Because the volume of cases that have been tried and reported in this country is so large, there is no one digest that provides access to all decisions for all time. Digests are restricted in their coverage to a certain period of time, a certain court or group of courts, or a combination of the two. The *Decennial Digests*, for example, index all reported court decisions for a given 10-year period. At the other extreme, the *Supreme Court Digest* indexes only decisions of the U.S. Supreme Court, but with the help of regular supplementation it indexes all Supreme Court decisions before the current year. As with case reporters, West Publishing Company is the principal publisher of digests.

Three digests index all reported decisions of federal courts for certain periods of time. The *Federal Digest* indexes cases before 1939, the *Modern Federal Practice Digest* indexes cases between 1939 and 1962, and the *Federal Practice Digest* indexes cases after 1962. There are also digests published for the regions covered by the regional reporters, for individual states, and for some specialized courts.

If one knows the name of a case, a digest is as easily used as a telephone book. Simply turn to the table of cases in one of the later volumes and one will find the citation listed. If the researcher does not know the name of the decision but only its subject or, more likely, does not want a particular case but only a topic on which to find court decisions, the researcher must be able to use the main body of the digest.

It is important to understand how the digest can be used as a subject index to cases. Turn back to the court decision illustrated in Figure 1 (page 6). Notice the headnotes, the key numbers, and the digest topics. The digest topics and

the key numbers constitute a set of subject headings under which the editors at West have classified this case. They are like the subject headings in a library's card catalog. That is, they are a series of subject categories into which all decisions (like all books in a library) are classified in order to make it possible for the user to find material on a given topic.

The major subject categories in the West system are called *digest topics*, and there are more than 400 of them. Examples are "Schools and School Districts," "Colleges and Universities," "Civil Rights," "Wills," and "Burglary." Each digest topic is divided into numbered subtopics; these are the *key numbers*. The more complicated digest topics have more than a thousand key numbers.

In Figure 1 the digest topic for the first headnote is *Schools and School Districts* and, as sometimes is the case, one aspect of the case has been put under a pair of related key numbers, 136 and 137, which belong to the same digest topic. The headnote that follows summarizes this aspect of the case and usually follows very closely the wording of part of the decision. The next headnote has been summarized under the digest topic *Appeal and Error* and key number 989.

The main body of a digest is nothing more than a printing, arranged by digest topic and key number, of headnotes of all the court decisions within the time and court coverage of the digest. Figures 1 and 2 together can be used to illustrate this.

Figure 2 is a page from Part 1 of the *Ninth Decennial Digest*. This digest indexes all reported cases from all courts for the period 1976-1981 (This five-year digest contradicts its name and is a departure from past practice). The page shown is the beginning of the list of all the headnotes classified under *Schools and School Districts* key number 133.12 during that period. The headnote from the decision in Figure 1 has been marked and in the digest it includes a citation to the case. This citation allows the researcher to locate the case.

Determining Key Numbers

At the beginning of the listing of headnotes under this key number there is the legend "----Substitute and supply teachers." The heading begins "----" because this is one of a sequence of key numbers that deal with different aspects of teacher tenure. The full key number heading would read "Permanent tenure—Substitute and supply teachers."

This is a good example of how the system of key numbers can be stretched to accommodate changing patterns of litigation. Earlier in the century, key number 133 was sufficient for all disputes involving employment of teachers. This key number has now been divided into 16 parts, eight of which involve teacher tenure.

It should be clear that the researcher who wishes to locate court decisions on a certain topic needs to do two things:

R.I. 1980. Length of probationary period prior to granting of tenure is matter exclusively within domain of legislature, and school committee may not alter length of the period by contract or otherwise. Gen.Laws 1956, § 16-13-3.—Barber v. Exeter-West Greenwich School Committee, 418 A.2d 13.

R.I. 1976. Where teacher had held position in school district for less than two years after transferring from school district in which she had acquired tenure, she did not have tenure and could be terminated without finding of good and just cause. Gen.Laws 1956, §§ 16-13-2 to 16-13-4, 16-13-8.—Jacob v. Board of Regents for Ed., 365 A.2d 430, 117 R.I. 164.

Wash.App. 1978. Teaching competence is cornerstone of statute establishing probationary period so that shortcomings can be remedied short of discharge, and statute is directed at teacher whose work is judged unsatisfactory and is aimed at correcting remediable deficiencies in teaching or classroom discipline and control, and compliance with such inapplicable statute was not necessary before school board could invoke rule on which salary was reduced for failure to comply with district's continuing education policy. RCWA 28A.67.-065.—Myking v. Bethel School Dist. No. 403, 584 P.2d 413, 21 Wash.App. 68.

⇐133.12. —— Substitute and supply teachers.

D.C.Pa. 1978. Substitute teacher had no tenure right to be employed to fill new vacancy at junior high school in a position which she had never held.—Flucker v. Fox Chapel Area School Dist., 461 F.Supp. 1203.

Cal.App. 1981. A school district is not required to match specifically a temporary employee to a person on leave of absence.—teacher who has been removed temporarily from his normal classroom assignments to perform administrative duties, teacher was "absent from service" while serving as acting dean of boys at high school and thus plaintiff, who was assigned as a long-term substitute in place of such teacher, was properly classified as a substitute rather than as a probationary employee and thereafter continued to be properly classified as a substitute employee when she served as either a day-to-day substitute at various schools or as a long-term substitute for teachers who were on leave of absence. West's Ann.Education Code, § 13336.—Levy v. San Francisco Unified School Dist., 145 Cal.Rptr. 292, 79 C.A.3d 953.

Cal.App. 1976. Because substitute and temporary teacher classifications are not guaranteed procedural due process by statute, they are narrowly defined by legislature, and should be strictly interpreted. West's Ann. Education Code, §§ 13337, 13337.3.—Paulus v. Board of Trustees of Sequoia Union High School Dist., 134 Cal.Rptr. 220.

Mass.App. 1978. Inasmuch as a long-term substitute is frequently a replacement for a "regular" teacher, performs same functions, is evaluated and hired in same manner as a regular teacher, and serves for a predetermined period of time, such service, so long as it is regular and continuous throughout school year, is to be counted under applicable statute for purpose of establishing tenure. M.G.L.A. c. 71 § 41.—Brophy v. School Committee of Worcester, 383 N.E.2d 521, 6 Mass.App. 731.

Minn. 1978. Where, between September 18th, 1973, and October 1, 1973, teacher was employed by school district for 6.7 days as a "short-call" substitute teacher and where, on October 2, 1973, a few weeks after school year began, teacher took place of regular classroom teacher who had been injured in regular teacher in order to provide substitute with time necessary to effect tenure, notwithstanding fact she did work of regular teacher. N.J.S.A. 18A:1-1.—Driscoll v. Board of Ed. of City of Clifton, Passaic County, 398 A.2d 97, 165 N.J.Super. 241, *affirmed* 398 A.2d 90, 79 N.J. 126.

Where local board did not act in bad faith in employing substitute teacher when tenured teacher failed to report and had no real freedom of action as to tenured teacher, who could only be involuntarily dismissed pursuant to the Tenure Employees Hearing Law, and substitute teacher failed to protest throughout school year as to compensation received, local board could not be required to retroactively regard substitute as regularly employed teacher since to do so would effectively negate and contravene its statutory authority to hire substitute teacher. N.J.S.A. 18A:1-1, 18A:6-9, 10 et seq.—Id.

N.Y. 1980. Teaching position temporarily open because incumbent took short-term leave of absence was not "vacancy" within section of Education Law entitling teacher whose position has been abolished or consolidated to be reinstated in event of "vacancy" occurs in similar position, thus rights of former junior high school language teacher whose position had been abolished were not violated when school district ignored her status as a "preferred eligible" and appointed teacher, who had lost her position for reason other than abolishment or consolidation, as a regular substitute to fill the opening. Education Law, § 2510, subd. 3.—Brewer v. Board of Ed. of Plainview-Old Bethpage Central School Dist., 433 N.Y.S.2d 1009, 51 N.Y.2d 855, 414 N.E.2d 389.

N.Y. 1979. School board is free to determine whether to appoint particular person to particular position and is under no obligation

Figure 2. Page from the *Ninth Decennial Digest*, published by West Publishing Company. Used by permission.

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1. Determine the key number or numbers under which the desired decisions will be classified.
2. Locate the listing of headnotes under that key number in the appropriate digest.

The second of these steps is simple. The main body of each digest is arranged by the digest topics in alphabetical order from *Abandoned and Lost Property* to *Zoning and Planning*. The key numbers, with all their associated headnotes and case citations, are listed in numerical order under each digest topic.

However, determining the appropriate key number is not simple. There are several methods that can be used, but none of them works all the time. One way to begin is by trying to decide which digest topic is appropriate. At the beginning of all digests and at the beginning of each volume of the decennial digest is a list of the digest topics. Scan the list; if one topic appears promising, turn to the location in the digest where the coverage of that topic begins. There will be found a brief discussion of the subjects included in that topic and cross-references to related topics. If the topic still seems promising, turn to the next section, which will be labeled *analysis*.

The analysis of a digest topic is simply a list of all the key numbers into which it is divided and a brief description of the coverage of each key number. Look through the key number listing to decide if any of them appears likely to be applied to the kinds of decisions sought. If any of the key numbers appears useful, keep turning pages. After the analysis will be found the first key number of that topic and all the cases that have been categorized under it; then comes the second key number and so on.

Descriptive Word Index

If inspecting lists of digest topics and lists of key numbers does not produce results, there are other methods. The most important of these is use of the *descriptive word index*, which in some digests is called *words and phrases*. This is usually found spread over two or three volumes toward the end of a digest but occasionally is at the very beginning. The descriptive word index is a subject index to the digest topics and key number headings. Look in this index for any phrase that might relate to the desired subject and this index will indicate the proper digest topic and key number.

Knowing one decision on a topic, a person can easily find others. Locate the decision in a reporter and note the digest topics and key numbers under which it has been classified. Then take a digest, any digest, and turn to the listing of headnotes classified under the same key numbers.

One last point should be emphasized before we leave digests — be patient. The use of digests is a trial-and-error process and takes time. The researcher reads all the headnotes under a key number and none of them fits. The researcher then goes to the descriptive word index and finds another key number

and reads all the headnotes under it. If nothing is found in the first half hour, that is all right; the search has only started.

Another source that can be used to locate decisions on a topic is annotations to codes. We will discuss this in detail in the next chapter.

Because the educator is unlikely to be experienced in using specialized legal research tools, frequently the most convenient way to locate decisions on a topic is through the use of secondary sources. Any law library will contain textbooks, treatises, law journals, legal encyclopedias, legal dictionaries, and loose-leaf reference books. Because of the central importance of court decisions in legal research, all these sources cite decisions copiously. Subsequent chapters will discuss the different kinds of secondary materials and will give greater emphasis to the ones that can be of particular use to educators.

Chapter 3
Finding Information About Legislation

In addition to court decisions, another important source of law is *legislation*. Legislation is the product of Congress or the state legislatures, and is approved by presidents or governors. To use legislation effectively in research, an educator must be able to understand the forms in which legislation is published and to locate in the library any part of the documentary record of the legislation's passage.

Codes and Statutes

Just as the federal government and each of the 50 states have separate systems for producing legislation, the federal government and the states have separate systems for publishing legislation. A well-equipped academic law library should have *codes* and *statutes* for each state and for the federal government. A college or university library, a medium-sized public library, or a public law library will probably have codes and statutes for the federal government and for the state in which it is located.

Each of the two forms in which legislation is published — *codes* and *statutes* — is needed for researching different kinds of questions. To understand their usefulness it is vital to understand the differences between them.

There is no rhyme or reason to the order in which legislation is produced. The vagaries of parliamentary maneuver and executive whim may determine that on a given day the president signs into law an act defining boiled peanuts out of the peanut quota, an act allowing one individual to settle in the United States as an exception to the normal immigration quotas, and the entire federal education program for the year. These acts will be published as *statutes* in that order.

Statutes, which are usually called *session laws* at the state level, are published in bound volumes by year or by legislative session. A subject index is usually included. An academic library is likely to have the session laws for all states in bound form or on microfiche.

Statutes or session laws are useful for historical or academic research. When studying the text of a particular law passed at a particular time, one must refer to a statute. But for many kinds of legal research, statutes are cumbersome.

The most common goal in researching legislation is not to locate an individual statute, but to find all the law that is currently in effect on a topic. This would be difficult if the only tool for this purpose was a set of session laws. There would be one or more volumes and a subject index for each year. The first step would be to look in each year's subject index to find all the statutes ever passed on education. The next step would be to determine which laws are still in effect.

This process can be complex. It is not at all unlikely that a statute containing a compound sentence could have been enacted in 1840; the first clause of the sentence repealed in 1923; the second clause amended in 1948; the entire sentence replaced by another containing almost the same words in 1975; and another clause added to this in 1983. In federal law, many sections of law have a history even more complex than this; therefore, it is readily apparent how tedious is the process of determining the current law on a subject by using statutes. What is needed is rearrangement of law by subject without regard to the statute in which a certain passage became law.

Just such subject arrangements of laws exist; they are called *codes*. Attorneys use codes as their most important source of published legislation. They usually turn to statutes only when they seek to establish the legislative intent of sections of code. Separate codes exist for federal law, for each of the states, for territories, and for some Native American tribes.

The most useful codes are *annotated codes*. In an annotated code each section of code is followed by summaries of the important court decisions that have applied or interpreted the section. In some annotated codes, references to relevant secondary sources are also included. Remember that in Chapter 1 we gave an example of a section of the *Alabama Code* and described how it has been interpreted by the courts. The court decisions giving this interpretation came from the annotation to that code section.

The *United States Code* is published by the Government Printing Office. Because it is not annotated, it is seldom used by attorneys or other legal researchers. Two privately published codes, the *United States Code Annotated* and the *United States Code Service*, are almost universally used instead of the official edition. For most states, the official edition of the code is annotated and is published by a private publisher. Most codes are kept up-to-date with *pocket parts* — supplements that fit in a compartment in the back of each volume.

The official edition of the federal statutes is the *Statutes at Large*. A privately published edition of the statutes with the ungainly and misleading title of *United States Code Congressional and Administrative News* is widely available in libraries and has a large amount of supplementary material.

Legislative Intent

In addition to using previous court decisions that interpret a code section as a guide to its application and meaning, another technique that can be used for the same purpose is researching *legislative intent*. This is done primarily through the documents that are produced in the legislative process. Almost all of the sources we will discuss are available in any government documents depository library, whether or not it is a law library.

We will follow the path along which a bill travels before it becomes law; and at every point at which a document is produced we will discuss that document, explain its use to the researcher, and give directions as to how it can be found in the library. We will look at this process at the federal level because at that level the documentation is the most complete. For state legislation the process is similar, but the documentation is often less satisfactory.

When a bill is introduced in Congress it is given a number. If it is the 3,475th bill to be introduced in the House of Representatives in that session, its number will be HR 3475. If it is the 5th bill to be introduced in the Senate, its number will be S 5. Some unusual pieces of legislation are numbered as resolutions. The bill number is important because many sources of information on legislation are indexed by bill number. When researching legislative intent, the first step is usually to ascertain the bill number. One can find this number immediately preceeding the text of the law in its statute form in *Statutes in Force* or *United States Code Congressional and Administrative News*.

Bills introduced after 1978 are published on microfiche. Paper copies of older bills are usually available at large academic libraries.

After the bill is introduced, it is referred to a committee of Congress that has the responsibility for all legislation on a particular subject. Legislation dealing with education is handled in the House of Representatives by the Committee on Education and Labor and in the Senate by the Committee on Labor and Human Resources. Sometimes a bill will fall into the jurisdiction of more than one committee and will therefore be considered by each committee involved.

Most of the time the bill will never be heard from again. The majority of bills are introduced, are assigned to a committee, and die. All too often, the member of Congress who introduces a bill does so with no intention that it become law.

Hearings and Reports

If the members on the committee choose to consider a bill seriously, they may hold hearings. They summon experts, lobbyists, and other legislators to testify for and against the bill. The witnesses usually bring with them written material, they make oral statements, and they submit to questioning by committee members. News stories are frequently based on something someone said at a committee hearing.

The written material submitted by witnesses together with the transcripts of their testimony are sometimes published as *hearings*. Hearings are an invaluable source of raw material on legislation and are available at virtually any government documents depository library. Many libraries will have hearings stored on microfiche. Unpublished hearings are usually available from the committee. The government documents librarian at a depository may be willing to request an unpublished hearing for a researcher, but that researcher may have to pay the committee for photocopying.

Hearings, like most United States government publications, usually are not listed in the library's card catalog. If the hearing was published in 1970 or later, its call number can be found using the *Congressional Information Service* index, which can be found in most depository libraries. This set of books indexes all publications issued after 1969 by congressional committees. For each year the *Congressional Information Service* has two volumes, an index volume and an abstracts volume. Hearings and other committee publications are indexed by subject, bill name, testifying witness, and bill number in the index volume. A reference to a hearing in the index volume will give the number of an abstract in the abstract volume. At the beginning of the abstract appears the call number of the hearing. The call numbers of all committee hearings begin Y4. Hearings of the House Committee on Education and Labor will have call numbers that begin Y4.Ed8/1, and hearings of the Senate Committee on Labor and Human Resources begin Y4.L11/4.

Note that the *Congressional Information Service* indexes all hearings by the year in which they were published rather than by the year in which they were held. Hearings are frequently not published until the year after they took place.

Hearings published before 1970 may be found in the *Monthly Catalog*. As its name implies, each issue of the *Monthly Catalog* is a catalog of all the publications issued by the Government Printing Office during a particular month. It should be available in any academic or public library of even medium size and in any depository library.

In order to use the *Monthly Catalog* to determine the call number of a hearing, locate a reference to the hearing in the index by subject. Next to that reference find the entry number of the hearing. Turn to that entry number in the catalog and find, among other things, the call number of the hearing. Use of either the *Congressional Information Service* or the *Monthly Catalog* is a time-consuming, trial-and-error process. Unless exceptionally lucky, the researcher will inspect a number of entries before the correct one is located.

Another important document that committees produce is the *report*. Committee reports are very important because they are official statements of legislative intent.

After a committee has considered a bill, possibly held formal hearings on it, and possibly amended it, the committee may decide that the bill should

become law. The bill is then passed on to the entire House or Senate with a report written by the committee staff. If a bill is in the jurisdictions of more than one committee, reports can be produced by each of the committees involved.

The report will discuss the need for a bill and give a brief history of the situation that produced the need for it. The budgetary impact of the bill will most likely be discussed. If the bill was amended by the committee, the amendments will be justified. Many reports contain a section-by-section analysis of the bill. This analysis is the most valuable part of a committee report in justifying legislative intent. The report may include minority views of committee members who oppose the bill or oppose its current form.

All reports for each house of Congress are numbered sequentially during the two-year period that constitutes one term of Congress. The first two (or soon, three) digits indicate the term of Congress. For example, Senate Report 98-145 would be the 145th report of any Senate committee during the 98th Congress. The 98th Congress serves in 1983 and 1984, the 99th in 1985 and 1986, the 100th in 1987 and 1988, and so on.

Libraries have committee reports available in a number of different forms, but the reports always are referred to by these report numbers. The simplest source for report numbers is the legislative history table in the last volume of each year's set of *United States Code Congressional and Administrative News*. This table is arranged by public law number, which is assigned to each statute as it is signed into law. The public law number can be found at the beginning of the text of a statute in either the *Statutes at Large* or the *United States Code Congressional and Administrative News*. Public law numbers can also be found in annotated codes. The number of a report also can be found in the *Congressional Information Service* or the *Monthly Catalog* using much the same techniques as those used for locating the call numbers of hearings.

The Government Printing Office publishes reports in two forms. First, the individual report is published in paperback. Two or three years later all the reports from a session of Congress are published together with other publications in several volumes of a continuing series called *Serial Set*.

Beginning with the 97th Congress in 1981, all House and Senate reports were placed in sequence with other government publications by assigning them numbers in the same call number sequence. The prefix for Senate reports is Y1.1/5; the prefix for House reports is Y1.1/8. For example, Senate Report 97-465 has the call number Y1.1/5 97-465. Volumes of the Serial Set have the prefix Y1.1/2. Congressional committee reports and Serial Set volumes published after 1981 are usually shelved with other government publications and come in sequence before committee hearings whose numbers have the prefix Y4. Most libraries shelve reports and Serial Set volumes published before 1981 in a separate area of the government publications section.

The *United States Code Congressional and Administrative News* reprints some committee reports in its legislative history section. At least one commit-

tee report is included on every major piece of legislation and the full set of reports is included for important laws.

After a bill is reported by committee it is considered by the entire house of Congress (Senate or House) into which it was introduced. Congress debates the bill, amends it, and votes to pass or reject it. The transcript of the debates, the texts of the amendments, and the record of the votes are all found in the *Congressional Record*. The *Congressional Record* is indexed by subject, by popular name, by bill number, and by name of member of Congress.

Although material in the *Congressional Record* can be useful, it is considered less authoritative than material in committee reports (members of Congress have been known to exaggerate). Also, members of Congress often are not even in Washington on the day the *Congressional Record* has them delivering a moving oration. The "speech" was delivered by typescript.

If a bill passes its first house of Congress, it is sent to the other house. Now properly but not consistently called an act, it goes through the same process in the second house that it went through in the first. It is assigned to a committee or committees, which may hold hearings or may bury the bill. If the bill is approved by committee, it is sent with a report to the entire second house (House or Senate) for consideration. The act may be amended by committee in the second house or it may be amended by action of the entire second house. The second house then debates it and votes to pass or to reject it.

If an act has passed both houses of Congress in identical forms, it is sent to the president for his consideration. If, because of amendments it has accumulated along the way, the act has not passed the House and Senate in the same form, the act must be sent to a *conference committee*. This committee is made up of members of both houses who are charged with producing a compromise version of the bill. When the conference committee has finished its work, it issues a report. Because this report is almost always an analysis of the bill in its final amended form, it is the most important single item in the published legislative history of an act.

The conference report is numbered and published as if it were a report of a committee of the House of Representatives. It is usually included in the *United States Code Congressional and Administrative News* and, unlike other committee reports, it is usually printed in the *Congressional Record*.

Researching Bills that Fail

The research techniques we have discussed so far in this chapter are useful only for researching bills that have become law. Research is sometimes also conducted on bills that fail. Many bills fail to become law after having progressed far enough through the legislative process to have produced hearings and reports. These publications are accessible through the *Congressional Information Service* and the *Monthly Catalog*, just as materials on bills that pass are. However, the *United States Code Congressional and Administrative News* contains material only on bills that have become law.

The most difficult problem in researching unsuccessful legislation is determination of the bill number. The subject index to the *Congressional Record* is sometimes useful, and in most libraries it is the only helpful source available; but the only consistently reliable source for subject access to bill numbers is the *Congressional Index*, published by Commerce Clearing House. This is a loose-leaf, two-volume set with one volume for each house of Congress. The current set is constantly updated by filing new pages and removing old ones. A new set is begun for each term of Congress; the two-volume sets for previous terms usually are kept, and they remain a valuable source of information on unpassed legislation from previous years. Unfortunately, the *Congressional Index* is fairly expensive and is unlikely to be found outside of an academic law library or a large academic library that is a depository.

Status of Pending Legislation

Frequently an investigator will want to ascertain the *status* of a pending bill. There are two sources that can be helpful. The *Congressional Index* has a status of bills section that allows the researcher to determine the recent status of pending legislation. A more commonly available source of information on pending legislation is the *Calendars of the House of Representatives*, which in spite of the plural in its title is a single paperback publication. It may be found in a depository library, but it is more likely to be in a depository that is also a law library. In it is a table with the heading "Numerical Order of Bills and Resolutions Which Have Passed Either or Both Houses and Bills Now Pending on the Calendars." Stripped of the parliamentary jargon, this means all bills that have been reported by committees. If a bill is listed, its current status is listed; if it is not listed, the bill has not been reported by the committee to which it was first assigned. A new *Calendars* is published for each day the House is in session.

A valuable and frequently overlooked source of information on both past and current legislation is the army of Washington lobbyists. Professional organizations and other groups interested in education maintain Washington offices to influence legislation. Frequently these groups are very helpful to the researcher who writes or, better yet, telephones them for information.

Other Washington offices that can be helpful are those of representatives and senators. They are usually glad to answer any requests from their constituents for information on current legislation. The office of a representative or senator who is on a committee concerned with education can be particularly helpful.

State Legislation

The problems of legal research at the state level vary greatly from state to state. Some states publish the full array of hearings, reports, and floor debates that are available on federal legislation; and some states publish nothing but

the final text of the law. Mary Fisher's excellent *Guide to State Legislative Material*, which should be available at any academic law library, lists what kind of material is available from each state, the cost of the material, and the telephone numbers of the offices from which it is available.

Another useful source of material on legislation at the state level is the major newspaper in the capital city. Many university and large public libraries maintain indexes to important newspapers in their states, and a few telephone calls may allow the researcher to reach a librarian who can find needed information.

Chapter 4
Using the Publications of Federal Agencies

The publications of government agencies are particularly useful for the kinds of legal research that non-attorneys are likely to conduct. Useful publications include annual reports, the conclusions of commissions charged with the investigation of an issue, and the various published forms of regulations. This chapter will discuss the utility of agency publications for educators and how these documents can be located in the library. Most of these materials can be found in depository libraries.

Finding Federal Regulations

For more than a century there has been a division of the federal government whose primary concern is education. This entity has had several names and has occupied several different places in charts of government organization. However, the Superintendent of Documents Classification Scheme (SuDoc) used for assigning call numbers to government publications is cumbersome when dealing with federal reorganizations. The SuDoc scheme provides for *new* call numbers for the publications of a government division after that division has been reorganized; but, unfortunately, this rule has been applied haphazardly. Table 2 lists the government divisions concerned with education and the larger entity of which most were a part, the time period for that arrangement, and the SuDoc call numbers of their publications. The overlap in time periods is caused by inconsistency in the assignment of SuDoc numbers.

A worthwhile exercise for an educator with ready access to a depository library is to scan the government publications shelves in these call number areas. Annual reports, the reports of special study commissions, and reports on the implementation of particular federal programs will all be of interest.

The government agency publications that are the most important to legal researchers are those that contain rules and regulations. Educators do not have to be reminded of the importance in their professional lives of the regulations

of such entities as state education departments and tenure commissions as well as such federal agencies as the Department of Education.

Federal regulations are authorized by legislation or, less frequently, by the executive orders of presidents. The authorizing law or order, referred to as the *authority*, delegates to the government agency the power to regulate something. Frequently, the regulations are needed to interpret and implement the legislation, and they are generally more specific and technical. For example, the Vocational Education Act of 1963, as later amended, called for a federal program to assist the state's vocational education programs. The general intent of the legislation is given concrete form in 47 pages of regulations that set up the program. An educator who intends to apply for a grant under this program had better be able to locate and apply these regulations.

As is the case with the documentary history of the legislative process, the publication of regulations at the state level varies greatly from one state to another. The best state publication systems resemble that of the federal government. For information about the publication of regulations in a particular state see the *Guide to State Legislative Material* or contact the library of a public law school or the state supreme court.

Regulations at the federal level are published in two forms that are similar to the statute and code forms in which legislation is published. The form that in analogous to the statute is published in the *Federal Register*.

Published every workday, the *Federal Register* is about the size of the telephone directory of a medium-sized town. On some days more than one volume is required. New regulations and amendments to existing regulations are usually published twice in the *Federal Register*. The first publication is in their proposed form. Anyone with suggestions, objections, or comments on the new regulation is given an address to which comments may be sent and a telephone number where further information can be found. The regulations

Government agency	Call Number	Dates
Bureau of Education	I66	1869 - 1929
Federal Security Agency: Office of Education	I66	1929 - 1939
Department of Health, Education and Welfare: Office of Education	FS5	1953 - 1969
Department of Health, Education and Welfare: Office of Education	HE5	1970 - 1979
Department of Health, Education and Welfare: Education Division	HE19	1972 - 1979
Department of Education	ED	1979 -

Table 2. Federal government agencies primarily concerned with education, the dates of their existence, and the call numbers assigned to their publications by SuDoc.

are published a second time in their final form. This time they are accompanied by a summary and discussion of the comments received. Frequently, the regulations have been amended to take the comments into account. The regulations may go into effect immediately, or the effective date may be given.

Researching regulations in the *Federal Register* could be an onerous task because there has been an issue published every workday since 1936. Fortunately, there is a publication called the *Code of Federal Regulations* (*CFR*) that simplifies the task.

The regulations of federal government agencies are arranged in the *CFR* by subject and agency. The *CFR* is divided into 50 subjects called *Titles*. Titles are subdivided into subtitles, subtitles into chapters, chapters into parts, and parts into sections. Title 7 of the *CFR* contains the regulations on agriculture, Title 26 the regulations on taxation, and Title 42 the regulations on public health. Regulations dealing with education are found in Title 34. The topics included in Title 34 range from civil rights to the administration of student loan programs.

Finding Amendments to Regulations

Determining the federal regulations on a topic is usually a two-step process. The first step is the location of the pertinent regulations in the latest edition of the *CFR*. The second step is to determine if the regulations have been amended in the *Federal Register*. Omission of the second step can cause serious problems.

Locating regulations in the *CFR* can be difficult. The last volume of the *CFR*, the *Finding Aids*, contains what is called a subject index, but it is a poor one. It is more likely to have regulations listed under the name of the issuing agency than under their topic. Occasionally, the researcher can go directly from an entry in this index to the desired regulation, but more frequently the process is long and involves repeated trial and error. When the desired regulation cannot be found by using the subject index alone, the best that can be done is to determine the agency likely to be the source of the desired regulation. Then the tables of contents attached to each title, subtitle, chapter, part, and section must be consulted. Perhaps the topic being sought will be listed there.

There are other indexes to the *CFR* that are more useful than the *CFR*'s own index. By far the best subject index to the *CFR* is the privately published *Index to the Code of Federal Regulations*. This is a massive and expensive work that is published in four volumes, three of which are larger than the telephone directory of a large city. Unfortunately, this index is not likely to be found outside a large law library. The authors of this index sift through the *CFR* with a very fine mesh and index regulations under narrow and precise subject headings such as small geographic areas or individual chemicals.

Another method of locating regulations is to begin with the authorizing legislation. Because the indexes available to the *United States Code* are better

than the index to the *CFR*, it is frequently easier to locate the code sections dealing with a subject than to locate the regulations. Then the researcher must turn to one of several indexes that lead from the authorizing legislation to the authorized regulations. One such index is found in the *Finding Aids* volume to the *CFR*. Also, the annotations to code sections in the *United States Code Annotated* and the *United States Code Service* sometimes include references to the regulations authorized by the sections.

After the regulations have been found in the *CFR*, the next step is to ascertain in the *Federal Register* whether the regulations have been amended. Many attorneys and law students, who should know better, omit this step; but it is extremely important. Regulations are ephemeral things, far more ephemeral than legislation. Even the most recent *CFR* volume in an efficiently managed library will probably be six to eighteen months out-of-date. In an inefficient library it may be older than that. This can be a long time in the life of a government regulation.

Shelved with the *CFR* should be a companion publication, the *List of Sections Affected*, which is published every month. This lists all amendments to the *CFR* made during a certain period, and it gives the *Federal Register* cites for the amendments. It is arranged by *CFR* title and section numbers.

The *List of Sections Affected* cumulates in a way that can be confusing to the uninitiated. A single issue of the *List of Sections Affected* contains amendments for different titles of the *CFR* for different periods of time. For example, the July edition of the *List of Sections Affected* will give all amendments to Title 4 of the *CFR* from January 1 of the current year until the end of July. Amendments to Title 42, however, will be included for the period between October 1 of the previous year and the end of July. The rules that determine how a given issue of the *List of Sections Affected* cumulates are confusing and not worth memorizing. The researcher can decide which issues must be used by inspecting the revision date of the *CFR* title involved (given on the cover) and the cumulation periods for the *List of Sections Affected* (given on the first page). The latest edition of the *List of Sections Affected* will always be used, and sometimes an older edition will also be needed.

Consulting the *List of Sections Affected* does not end the process of searching for amendments to regulations found in the *CFR*. The latest edition of the *List of Sections Affected* is probably two months old, and much can happen in two months. Fortunately, there is a simple method that can be used to locate very recent amendments to the *CFR*. For this purpose, the *Federal Register* itself is useful.

Near the end of each issue of the *Federal Register* is a table of all *CFR* parts amended during the current calendar month up to and including the day of issue. The table in the last issue of each month therefore lists all *CFR* parts amended during the entire month. *Federal Register* cites to all amendments are included. After the *List of Sections Affected* has been consulted, the researcher must go to this table for the last day of each calendar month after the

publication date of the last *List of Sections Affected*. The same table must then be consulted in the latest *Federal Register* available.

Occasionally, the regulation being researched will be brand new rather than an amendment to or replacement for an earlier regulation. Then the regulation will be found only in the *Federal Register*. A quarterly subject index is published for the *Federal Register* and should be shelved with it. For the period after the latest quarterly index, a non-cumulative subject and agency index is in the beginning of every issue of the *Federal Register*. Checking this index for every issue between the last quarterly index and the present is tedious, but is not as time-consuming as it may sound. Both the *CFR* and the *Federal Register* can be searched using the computer-assisted legal research systems. We will discuss these in Chapter 7.

Many government agencies publish a separate edition of their regulations. These can be found in a depository library's government publications area arranged by agency. In most cases, these regulations are identical with those found in the *CFR-Federal Register* system, except that they are not kept up-to-date as systematically. The use of regulations published in these forms is not recommended.

Chapter 5
Useful Periodicals

The legal profession has periodicals that are specific to its needs just as the education profession does. An educator in a law library may encounter legal newsletters, newspapers, and scholarly journals.

Newsletters and Newspapers

The newsletters educators might consult most often are published by the National Organization on Legal Problems of Education (NOLPE). *NOLPE Notes* summarizes recent legislative and courtroom action of importance in education, and *School Law Reporter* gives information on recent court decisions affecting education.

Another valuable legal periodical is the legal newspaper. Some of the articles in legal newspapers will be of great use to educators, and these articles can easily be located in a law library that possesses the proper index. Legal newspapers are published daily, weekly, or monthly. Important titles include the *New York Law Journal*, the *Los Angeles Daily Journal*, the *Legal Times of Washington*, the *National Law Journal*, and the *American Lawyer*. Legal newspapers and newsletters are indexed in *Legal Resource Index*, which will be discussed later.

Journals and Yearbooks

The most valuable and easily used legal research materials for educators are legal journals. Legal journals are very convenient for educators because the indexing tools used for locating articles on desired topics are similar to tools in other fields with which the educator is already familiar. Legal journals are valuable because much first-class research is published in them.

The most important legal journals are the academic law reviews. The law review has a place in the life of a law school that makes it unlike any other college-based publication. Law reviews are edited and published by law students who have earned their place by scholastic achievement or, at some schools, by both scholastic achievement and performance on a competitive ex-

amination. The students themselves contribute articles on important cases and on recent legal developments. The major articles in a law review are written by law professors or practicing attorneys, who may not be connected with the institution at which the law review is published. These articles are often cited in court decisions and sometimes play an important role in influencing the development of case law.

Another kind of law journal is devoted to the law of a specific subject area. This kind of journal can be published by a law school, by a commercial publisher, or by a special interest organization. One example is the *Journal of Law and Education*, which is published by a commercial publisher but is similar in format and scholarship to an academic law review. A useful section of this journal summarizes articles on education law that have been published in other legal periodicals.

The National Organization on Legal Problems of Education publishes the *Yearbook of School Law*, which can be one of the most valuable sources of information for an educator doing legal research. Each edition of the *Yearbook* summarizes and discusses the court decisions relevant to education from the previous year. Decisions bearing on such topics as governance, torts, pupils, bargaining, and finance are discussed by college faculty members with interest in these fields. The *Yearbook* may be found in an academic law library or in a college or university education department library.

Legal Periodical Indexes

Legal journal articles on a desired topic can be found using periodical indexes that are similar to other periodical indexes. The most familiar in appearance and format will be the *Index to Legal Periodicals*. This is published by H.W. Wilson, which publishes *Education Index*, *Reader's Guide to Periodical Literature*, *Social Science Index*, and other indexes with which the educator is likely to be familiar. The main body of the index is just like that of the other Wilson indexes. Citations to journal articles are grouped together under subject headings.

However, the location of articles by author in *Index to Legal Periodicals* is a little peculiar. Under an author's name are listed the subject headings under which articles by that author appear. The titles of the articles are not listed; only the first letter of the first word is listed. For example, the following process must be used to locate a 1981 article by Frank R. Kemerer. Under his name, the appropriate volume of *Index to Legal Periodicals* lists the heading Education followed by the letter "D" in parentheses. Turning to the alphabetical lists of articles under this subject heading, the researcher can find the article "Developing Law Involving the Teacher's Right to Teach."

One feature of the *Index to Legal Periodicals* that is very useful to the nonattorney is the table of cases, or case index. For the educator who has found a decision on a desired research topic but needs more explanation of the

ramifications of that decision, the table of cases can be a godsend. The case index refers the researcher to scholarly journal articles elaborating the implications of major court decisions.

The *Legal Resource Index* is easier to use than the *Index to Legal Periodicals* once the researcher gets over its unfamiliar format. It is not a series of bound volumes; it is a specialized microfilm reader. The *Legal Resource Index* presents a display very similar to that found on the pages of a more conventional periodical index. Under subject or other headings are listed citations to articles.

In spite of its unfamiliar construction, the *Legal Resource Index* has several important advantages over the *Index to Legal Periodicals*. Most important, it is cumulative. Every month the law library receives a new roll of microfilm listing all the articles that were listed on the old film in addition to the ones that have been added. It is not necessary to check this year's index and last year's index and so on. However, after 1985 the *Legal Resource Index* will begin dropping articles that are more than five years old.

The *Legal Resource Index* covers more publications than the *Index to Legal Periodicals*. It indexes more legal journals, legal newspapers, and law-related articles in periodicals that are not primarily oriented to law. It even indexes materials that are not periodicals at all — books, dissertations, and congressional committee hearings.

The list of subject headings used in the *Legal Resource Index* is based on the list used by the Library of Congress to classify books, and it is much more comprehensible to non-attorneys than the somewhat esoteric subject headings used in the *Index to Legal Periodicals*. The *Legal Resource Index* also lists materials by author, title, case, and statute. Again, it should be noted that the case index is very useful to the educator who needs an explanation of a perplexing court decision.

If the *Legal Resource Index* has so many advantages, what are its drawbacks? First, it is relatively new. It did not exist before 1980, and it contains no references to anything published before then. It is also expensive. A subscription costs more than a thousand dollars a year; therefore, this index is unlikely to be available outside an academic law library or a public law library in a large city.

The publishers of the *Legal Resource Index*, Information Handling Services, also publish a legal periodical index in a conventional book format, the *Current Law Index*. It uses the same comprehensible list of subject headings as the *Legal Resource Index*. The *Current Law Index* covers more legal journals than the *Index to Legal Periodicals*, but it does not index the broad range of materials covered in the *Legal Resource Index*.

Chapter 6
Reference Works

A number of other kinds of secondary sources are useful to the educator doing legal research. Several of these will be familiar because of their similarity to non-legal reference books.

Legal Dictionaries and Citation Stylebooks

Anyone who is not an attorney and who spends any time at all in a law library will quickly learn that the terminology used by attorneys is quite different from ordinary English. Who else but a lawyer would refer to seventeen-year-olds as infants? Attorneys themselves frequently need help with this jargon; therefore no library, however small, is likely to be without a legal dictionary. The two most common are *Black's Law Dictionary* and *Ballentine's Law Dictionary*.

These two dictionaries are very similar. Both give citations to cases in which words or phrases are defined, both interpret the sometimes confusing legal abbreviations, and both include guides to pronunciation. The pronunciation guide is vital with all the non-English words used in legal parlance. Both dictionaries are likely to be found in the reference rooms of university libraries and large public libraries as well as law libraries.

Doris Bieber's *Dictionary of Legal Abbreviations* can translate unfamiliar legal abbreviations that are not found in *Black's* or *Ballentine's*. The number of different abbreviations used in legal writing is usually astounding to researchers from other fields. Bieber's *Dictionary* has over three hundred pages of abbreviations and the print used is quite small.

A reference work that defies easy categorization, but which has some of the characteristics of a dictionary, is *Words and Phrases*. This publication shows how various words and phrases have been used in court decisions. Citations to the decisions are included. *Words and Phrases* is a massive work; it may give hundreds of examples of the use of more common terms. It has more than 80 volumes and is kept up-to-date with supplements that fit inside the back cover of each volume. *Words and Phrases* is expensive and is unlikely to be found outside an academic law library, a state law library, or an excep-

tionally well-equipped public law library. The educator who is able to locate a set will find it an extremely valuable tool for locating decisions as well as for researching the meaning of legal terminology.

A Uniform System of Citation, published by the Harvard Law Review Association, is the primary authority for the confusing world of legal citation forms. The educator who is writing anything that uses references to legal cases will need access to a copy. Almost any law library will have one available.

Legal Encyclopedias

The two most common legal encyclopedias, *American Jurisprudence 2d* and *Corpus Juris Secundum*, are likely to be found in almost any law library. For the kinds of legal research that educators are likely to be doing, their similarities are more important than their differences. Both are primarily summaries of the law as stated in court decisions, which makes them excellent means of locating cases on a topic. Almost any statement in either encyclopedia will be footnoted to court decisions that support it. *Corpus Juris Secundum*, which is a West publication, is likely to include citations to all the relevant cases on a topic, while *American Jurisprudence 2d* concentrates on the important cases. This sometimes makes *American Jurisprudence 2d* a simpler tool for the non-attorney to manage.

Both encyclopedias use "Schools" as a major topic. In both of them, the topic headings and the breakdown of topics are likely to be confusing to the non-attorney. Fortunately, each encyclopedia has a highly detailed multi-volume subject index at the end of the set that leads the researcher who is unfamiliar with the legal jargon to the desired subject heading.

Other Reference Works

Another secondary source that can be valuable is *American Law Reports*, which is universally referred to by its abbreviation, *ALR*. *ALR* has some of the characteristics of a case reporter and some of the characteristics of a secondary source. Because it is rarely used simply as a case reporter, we are discussing it here.

Each volume of *ALR* contains court decisions selected for importance, but even more valuable to the researcher are the *annotations* to cases. These annotations, which are similar in form to some law review articles, summarize the court decisions on a topic. An example of an *ALR* annotation is "Right of Schoolteacher to Serve as Member of School Board District where Employed," which is found at 70 *ALR 3d* 1188. The annotation cites and discusses court decisions from five states on this question. The supplement in the back of the volume cites and summarizes decisions from two additional states that were published after the original annotation. The annotation also gives references to other secondary sources where information on the topic can be found.

The publishers of *ALR* have followed a practice commonly used by

publishers of court decisions and have numbered *ALR* in series. As of 1983, there are four numbered series of *ALR* and one additional series that deals exclusively with the question of federal law. The series are usually abbreviated *ALR*, *ALR 2d*, *ALR 3d*, *ALR 4th*, and *ALR Fed*. *ALR* and *ALR 2d* are indexed by digests similar to those used with West publications. *ALR 2d*, *ALR 3d*, *ALR 4th*, and *ALR Fed* are indexed by shorter subject indexes called *Quick Indexes*. (*ALR 2d* is indexed in both forms). These indexes can be found shelved with *ALR*, and *ALR* can be found in almost any law library.

Many researchers who have mastered the use of the more esoteric research tools overlook the most familiar tool of all, the card catalog. Before hours and hours are devoted to tracking down decisions in the digests and encyclopedias, it is best to check the card catalog and see if someone has already researched the topic and published a monograph on it. However, the research will not end with the location of such a monograph because it is unlikely to be entirely up-to-date.

The American Civil Liberties Union publishes a series that can be useful to non-attorneys who have certain kinds of legal research questions. This is the "Rights of . . ." series. The two most useful titles for educators are *The Rights of Teachers* and *The Rights of Students*. Both these books are written in a straightforward question-and-answer format with footnotes to important decisions and statutes. They are excellent sources of information and may be available in an academic law library, a college or university education department library, or a public library. They are inexpensive paperbacks, and the researcher who is unable to locate a copy can order one through a local bookstore.

These two titles are not as up-to-date as a researcher might prefer. *The Rights of Teachers* was published in 1972 and the revised edition of *The Rights of Students* was published in 1977. Therefore, these books should only serve as starting points for research.

Phi Delta Kappa has published several booklets called "fastbacks" on various topics on school law. They give useful and readable summaries of the important decisions in this area and discuss their implications. Phi Delta Kappa also publishes monographs on school law topics. See the appendix for a list of these titles.

West's Nutshell series provides concise information on various legal topics. These titles are small paperback books and are usually written by law professors who specialize in the topic. Nutshells that may be of particular interest to educators are *Civil Rights in a Nutshell*, *Employment Discrimination in a Nutshell*, and *Local Government Law in a Nutshell*. These books should be available at any academic law library and are inexpensive enough that the educator may consider purchasing a copy.

Morris Cohen's *Legal Research in a Nutshell* is a good source for the educator who wishes to study legal research in greater detail than we have done here. Myron Jacobstein and Roy Mersky's *Legal Research Illustrated* is also worthwhile.

Chapter 7
Computer Research Systems

In recent years legal research computer systems have revolutionized law libraries. Two systems, Westlaw and Lexis, are available commercially; and two others, Juris and Flite, are owned by branches of the federal government. Juris is used by the Justice Department and Flite belongs to the Air Force. Either Westlaw or Lexis (or both) is available in almost any academic or state law library and in many public law libraries.

Although a researcher who is neither an attorney nor a law student can frequently become competent in the use of a legal research computer terminal in two hours of practice, the rates charged for those two hours may be prohibitively expensive. The educator even may be denied access altogether. On the other hand, use of the terminal may be gratis and access to it may be no problem at all, or the librarians may be willing to do research for the educator on the library's terminal. This puzzling situation arises from the variations in the contracts under which a law library can use the legal research system.

Both Westlaw and Lexis offer their services to academic institutions under terms that are quite different from those offered to law firms. Law firms and some law libraries that do research for law firms are charged for computer time at rates varying from $2 to $3 a minute. Academic law libraries, however, are charged a flat monthly rate in return for their agreement that the terminal will be used only by students, faculty, and staff who are doing academic research. This allows the libraries to make the terminal available at no cost to the student. Some university law school libraries allow access to their Westlaw or Lexis terminal by students and faculty from the rest of the university; some do not.

Therefore, a legal research terminal is likely to be accessible only to the educator who is a part-time or summer graduate student at a university that has a generous law school. But for the minority of educators who are able to use a terminal, the computer will be the most useful tool in the law library. In an hour on a Westlaw or Lexis terminal, as many court decisions, code sections, administrative rulings, and regulations can be reviewed as in an entire day of conventional library research.

The discussion in this chapter is intended to be useful both to the educator

who is able to use a legal research terminal in person and to the educator for whom a librarian runs a computer search. Any library at which a terminal is available will have manuals that supplement the information given here, and at some libraries a librarian will be willing to give a lesson to a beginning user.

Westlaw and Lexis have been competing with each other since the mid-1970s by copying one another's better characteristics as closely as the copyright and patent laws allow. As a result, the two systems are now very similar.

In both systems, a terminal is used to search the information in a remote database. The Westlaw computer is in St. Paul and Lexis in in Dayton, Ohio. Each contains the complete text of hundreds of thousands of court decisions and other documents that are sometimes useful in legal research. The two systems are primarily used to locate decisions on a particular topic. The first step in using either system is to choose the jurisdiction or jurisdictions to be searched. In the Westlaw system this is done by choosing a database that corresponds to one of the West reporters; that is, there is a *Southern* database, a *South Western* database, a *Federal* database, and so on.

The same step is done in a slightly different manner on Lexis. Their databases are called *files*, and there is a file for each state and for each level of federal court. Both systems allow, under certain circumstances, for many jurisdictions to be searched at one time.

Westlaw and Lexis use a technique called *text searching*. Both systems deliver the court decisions (or, less frequently, the code sections, administrative decisions, or regulations) in which specified words appear. The researcher must determine the words that will be used in the decision that he wants; if such a decision exists, the computer will provide it.

If the Westlaw system is directed to locate all the decisions in which the word *teacher* appears, it will not produce a case that uses instead the word *teachers*. Westlaw is almost perfectly literal. Lexis is slightly more flexible — it would also search for the regular plural *teachers*. But neither system would locate a case that used the word *schoolteachers*. The computers do not know that *teachers* and *schoolteachers* are equivalent terms. Anyone who is composing a text search must go over the legal situation being researched again and again, trying to think of all the words a judge might use in describing that situation.

Both systems allow the user to search for decisions in which whole phrases appear as well as single words. The mechanics are slightly different — on Westlaw the phrase must be surrounded by quotation marks, while Lexis has no such requirement. Both systems also provide the location of decisions by the appearance of series of words that do not adjoin one another immediately in a phrase. Exactly how these words appear in the decisions produced is determined by the use of *connectors*.

The two most logically simple connectors on each system are *and* and *or*. Lexis uses the words *and* and *or* for these connectors, while Westlaw uses the

ampersand, *&*, for *and* and a blank space between words for *or*. Take for example the search:

teacher or schoolteacher (Lexis)
teacher teachers schoolteacher schoolteachers (Westlaw)

This will produce all decisions in the database that contain either the singular or plural form of the word *teacher* and all the decisions that contain either form of the word *schoolteachers*. (Note that the plural forms must be given when using Westlaw.) Decisions in which both words appear will also be produced. The *or* connector is used to connect words or phrases that are synonymous or equivalent.

The *and* connector is more restrictive. The search

teacher and tenure (Lexis)
teacher teachers & tenure (Westlaw)

will produce only the decisions in which both terms are used. The *or* connector and the *and* connector can be mixed in such searches as

teacher or schoolteacher and tenure (Lexis)
teacher teachers schoolteacher schoolteachers & tenure (Westlaw)

This search will produce all decisions that include the singular or plural form of the words *teacher* or *schoolteacher* and that also include the word *tenure*.

The *and* connector is frequently not restrictive enough. If there is a decision in the database that includes the word *teacher* on the first page and contains the word *tenure* 10 pages later in an entirely different context, the above search will produce that decision. This decision is unlikely to be concerned with teacher tenure. What is needed is a connector that allows the researcher to locate cases in which the specified terms occur in some proximity to one another. Both systems have proximity connectors, but they are somewhat different in form.

The Westlaw system defines proximity between terms grammatically, by sentence and paragraph. The two proximity connectors are /p and /s. The search

teacher /p tenure (Westlaw)

will produce all cases that include *teacher* and *tenure* in the same paragraph, while the search

teacher /s tenure (Westlaw)

will produce all cases which include *teacher* and *tenure* in the same sentence.

Lexis proximities are defined by word count, that is, by the number of words that separate the search terms. The search

teacher w/10 tenure (Lexis)

will produce all decisions in which *teacher* and *tenure* appear within 10 words of one another. Any number up to 255 can be used with this connector.

Proximity connectors can be mixed with the *or* connector in much the same way that the *and* connector and the *or* connector can be mixed. Take for example the search

teacher or schoolteacher w/25 tenure (Lexis)
teacher teachers schoolteacher schoolteachers /s tenure (Westlaw)

Both systems have additional, more specialized connectors, but those are not used as frequently as the ones we have discussed here. Both also allow the user to put certain restrictions on a search — the computers can be restricted, for example, to decisions written by a particular judge or to decisions handed down after a certain date. Our purpose here has not been to discuss everything that the computers can do, but to give a first lesson.

After reading this book, and with a little practice, the educator without legal training should no longer find the law library to be a strange world. This book has discussed the basic sources of case law and legislation and has given an introduction to important secondary sources. The educator who has read this book should now be ready to pursue the ideal stated by Woodrow Wilson in 1894:

> Every citizen should know what law is, how it came into existence, what relation its form bears to its substance, and how it gives to society its fibre and strength and poise of frame.

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Phi Delta Kappa Legal References for Educators

Books

Legal Issues in Public School Employment
Joseph Beckham and Perry A. Zirkel, editors, 1983
$7.00 (members, $6.00)

A Delicate Balance: Church, State, and the Schools
Martha M. McCarthy, 1983
$6.00 (members, $5.00)

What Legally Constitutes an Adequate Public Education?
Martha M. McCarthy and Paul T. Deignan, 1982
$5.00 (members, $4.00)

Educational Tort Liability and Malpractice
Eugene T. Connors, 1981
$6.00 (members, $5.00)

A Digest of Supreme Court Decisions Affecting Education
Perry A. Zirkel, editor, 1978
$6.00 (members, $5.00)

Supplement to a Digest of Supreme Court Decisions Affecting Education
Perry A. Zirkel, 1982
$3.00 (members, $2.50)

The Supreme Court's Impact on Public Education
E. Edmund Reutter Jr., 1982
$7.00 (members, $6.00)

Fastbacks

The Legal Rights of Students (fastback #59)
Thomas Flygare, 1975
75¢ (members, 60¢)

The Legal Rights of Teachers (fastback #83)
Thomas Flygare, 1976
75¢ (members, 60¢)

Parents Have Rights, Too! (fastback #120)
M. Donald Thomas, 1978
75¢ (members, 60¢)

Student Discipline and the Law (fastback #121)
Eugene T. Connors, 1979
75¢ (members, 60¢)

Church-State Issues in Education (fastback #123)
David Tavel, 1979
75¢ (members, 60¢)

Legal Implications of Minimum Competency Testing (fastback #138)
Joseph Beckham, 1980
75¢ (members, 60¢)

Title IX: Implications for Education of Women (fastback #156)
Frank D. Aquila, 1981
75¢ (members, 60¢)

Legal Issues in Education of the Handicapped (fastback #186)
Donald G. Turner, 1983
75¢ (members, 60¢)

To order any of these titles, write to Phi Delta Kappa, P.O. Box 789, Bloomington, IN 47402.